

## REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner.

Upon entry of the instant Amendment, Claims 1-12, 14-19 and 21-27 will be all of the claims presently pending before the Examiner. Instantly, Claims 1 and 21 are amended. Claims 13 and 28-29 are canceled.

Applicants respectfully submit that no new matter has been added by the present amendments. Support for the amendments can be found generally throughout the Applicants' disclosure. These amendments are not intended to change the overall scope of the claims, but rather they are made simply to bring the claims into better accord with present U.S. practices.

The Office is requested to reconsider the outstanding rejections in light of the comments below.

### I. **Claim Rejections**

#### a. **35 USC 112**

Claims 1-19 and 21-29 stand rejected under 35 U.S.C. 112 as being allegedly non-enabled regarding "polyamide based thermoplastic material."

While Applicants disagree with the Office's assertion, the same is now rendered moot in light of the amendments to the claims in which specific polyamides are set forth, which are clearly enabled in Applicants' disclosure. Therefore, the rejections should now be withdrawn.

#### b. **35 USC 102(b) - Linder et al**

Claims 1-7, 10, 11, 13, 15-19, 21-23, and 25-29 stand rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Linder et al., USPN 5,075,380 (hereinafter "Linder").

As best understood, Linder relates to soft, rubber-like thermoplastically processible polymer alloys based on thermoplastic polyamides and special crosslinked particulate alkyl acrylate copolymer rubbers.

The alloy of Linder has a rubber copolymer (b) having a particle size of 0.09 to 1.2 mm (i.e., 90000 to 1200000 nm) (Col. 1, Line 68). In stark contrast, the presently claimed invention has a microgel which comprises primary particles having an average particle size of 30 to 300 nm. Linder clearly fails to teach or suggest the use of a microgel having an average particle size of 30 to 300 nm.

In light of the above, the present rejections should now be withdrawn.

**c. Double Patenting**

Claims 1-1, 13, 16-19, 21-23, and 25-27 are provisionally rejected under obviousness-type double patenting over claims 1-12, 15-19, and 22-30 of co-pending Application No. 10/573,217 (hereinafter "the '217 application").

Applicants submit both the present application and the '217 application are pending; however, any allowable subject matter has not yet been indicated in either application. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is named between two applications, MPEP § 104(I)(B) states that if the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, then the examiner should withdraw that rejection and permit the application to issue as a patent, thereby converting the provisional rejection in the other application into a non-provisional double-patenting rejection.

Because it is unclear which of the pending applications will become allowable first, and whether the subject matter so allowed will still be considered to result in an obvious-type double patenting rejection, any action by Applicants in this regard is presently premature. Applicants hereby reserve their right to respond to said provisional rejections if and when they are no longer provisional.

## II. Conclusion

In summary, it is respectfully submitted that the instant application, including Claims 1-12, 14-19 and 21-27, is presently in condition for allowance. Notice to the effect is earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

The USPTO is hereby authorized to charge any fees, including any fees for an extension of time or those under 37 CFR 1.16 or 1.17, which may be required by this paper, and/or to credit any overpayments to Deposit Account No. 50-2527.

Respectfully,

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